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Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on extrajudicial, summary or arbitrary executions submitted by the Special Rapporteur of the Commission on Human Rights, Asma Jahangir, in accordance with paragraph 22 of General Assembly resolution 57/214.

Summary

The present report covers activities undertaken in the period from1 July 2002 to 1 June 2004, addressing a number of issues which are of particular concern and require special or urgent attention.

The report is divided into five sections, focusing on different aspects of the problem of extrajudicial, summary or arbitrary executions, and contains the Special Rapporteur's conclusions and recommendations on issues falling within the purview of her mandate. Section I of the report provides a summary of the mandate entrusted to the Special Rapporteur. In section II, the Special Rapporteur presents the main activities she has undertaken in the framework of her mandate during the period under review. Section III gives an overview of the various situations involving violations of the right to life of special groups and issues of special focus. Sections IV and V are devoted to the Special Rapporteur's conclusions and recommendations.

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Contents

		Paragraphs	Page
I.	Introduction	1–3	3
II.	Mandate	4–6	3
	A. Terms of reference	4	3
	B. Violations of the right to life upon which the Special Rapporteur takes action	5	3
	C. Legal framework and methods of work	6	4
III.	Activities	7–13	4
	A. Communications	7–11	4
	B. Visits	12–13	5
IV.	Overview of situations involving violations of the right to life	14–69	6
	A. Capital punishment	20–27	7
	B. Genocide and crimes against humanity	28–31	9
	C. Violations of the right to life during armed conflict contrary to international humanitarian law, or as a consequence of it	32–37	10
	D. Deaths due to attacks by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State	38–42	11
	E. Deaths due to the use of force by law enforcement officials or persons acting in direct compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality	43	12
	F. Impunity	44–50	13
	G. Violations of the right to life of children	51–53	15
	H. Violations of the right to life of women	54–56	15
	I. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities or because of their sexual orientation	57–60	16
	J. Violations of the right to life of persons exercising their right to freedom of opinion and expression	61	17
	K. Expulsion, return of persons to a country or place where their lives are in danger (refoulement), and violations of the right to life concerning refugees and internally displaced persons	62–63	17
	L. Deaths in custody	64–65	18
	M. Death threats and violations of the right to life of persons carrying out peaceful activities in defence of human rights	66–69	18
V.	Conclusions	70–74	19
VI.	Recommendations	75–84	20

I. Introduction

1. On 26 August 1998, Asma Jahangir took up her function as Special Rapporteur on extrajudicial, summary or arbitrary executions. During her tenure the Special Rapporteur has presented one oral statement to the General Assembly, at its fifty-third session, as well as two reports (A/55/288 and A/57/138). This is her third and final report to the Assembly, submitted in conformity with resolution 57/214 in which the Assembly requested the Special Rapporteur to submit an interim report at its fifty-ninth session on the situation worldwide with regard to extrajudicial, summary or arbitrary executions and to present her recommendations for more effective action to combat the phenomenon.

2. The present report retains a focus on the activities undertaken in the period from 1 July 2002 to 1 June 2004, addressing a number of issues which, in the opinion of the Special Rapporteur, are of particular concern and require special or urgent attention. At the same time, the Special Rapporteur has identified, both from the accumulated information received by her as well as from the experience acquired during her country visits, some emerging patterns. It is worth mentioning that not every incident or situation falls into an identifiable pattern, nor do such patterns cover the entire scope of the mandate, but analyses of the information received by the Special Rapporteur do reflect certain trends.

3. Owing to limitations of space, and in order to avoid unnecessary duplication, reference will be made where appropriate to earlier reports of the Special Rapporteur in which more detailed discussion on the issues concerned can be found. The Special Rapporteur regrets that she was unable to include more current material in the present report, as she had to submit her report before retiring from her mandate.

II. Mandate

A. Terms of reference

4. For a detailed presentation of the terms of reference of the Special Rapporteur's mandate, see her reports to the Commission on Human Rights (E/CN.4/2003/3, paras. 6 and 7, and E/CN.4/2004/7, paras. 5 and 6), as well as Commission resolutions 2003/53 and 2004/37 and Assembly resolution 57/214.

B. Violations of the right to life upon which the Special Rapporteur takes action

5. For a more detailed description of the situations in which the Special Rapporteur has acted during the present reporting period, see E/CN.4/2003/3, paragraphs 8 and 9, and E/CN.4/2004/7, paragraph 7.

C. Legal framework and methods of work

6. For an overview of the international standards by which the Special Rapporteur is guided in her work, see E/CN.4/2003/3, paragraphs 10 to 12 and E/CN.4/2004/7, paragraphs 8 to 11.

III. Activities

A. Communications

7. The information received by the Special Rapporteur is overwhelming and has increased over the years as there appears to be more awareness of the special procedures system of the Commission on Human Rights. Only a fraction of it appears in her reports, as there is a need systematically to check the reliability of the information acted upon. At the same time, there is very little or no information from countries where civil society is isolated and less organized. Thus, lack of information on a country does not necessarily indicate that the situation of human rights there is satisfactory.

8. The Special Rapporteur was encouraged at the increasing cooperation offered by Governments during her missions. She also noted that in a number of countries there was increasing awareness of the work of the special procedures. She welcomes this development and recognizes that the special procedures can enhance their effectiveness while working in cooperation with Member States. She wishes to thank the Governments that invited her to visit their countries. Her experience has been a positive one as she received support and cooperation from all Governments during her visits. In this regard, she specially appreciates the constructive approach of the Government of Brazil during her visit and in the discussions in follow-up to her recommendations.

9. In addenda to the last two reports to the Commission (E/CN.4/2003/3/Add.1 and Corr.1 and E/CN.4/2004/7/Add.1), the Special Rapporteur indicated that she had transmitted 285 urgent appeals on behalf of several hundred individuals to 61 countries. Among those urgent appeals a total of 173 were transmitted jointly with other mechanisms of the Commission on Human Rights, such as the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on violence against women, the Special Rapporteur on the human rights of migrants, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on situation of the human rights defenders. As in previous years, the Special Rapporteur welcomes this development, which to a large extent is due to the enhanced coordination between the various mechanisms of the Commission as facilitated by the Quick Response Desk in the Office of the High Commissioner for Human Rights (OHCHR).

10. The Special Rapporteur also transmitted 115 letters of allegations regarding violations of the right to life of a large number of individuals and groups. Sixty-four of them were sent to 63 Governments as joint communications with other special rapporteurs.

11. During the period under review, a majority of Governments sent replies to urgent appeals or communications addressed to them by the Special Rapporteur during or prior to the reporting period. The Special Rapporteur wishes to express her appreciation to those Governments that have provided comprehensive replies to her communications. Regrettably, some Governments have replied only in part or on an irregular basis to her inquiries. She is concerned that some Governments did not reply to any of her communications and she continues to request responses from them.

B. Visits

12. The Special Rapporteur considers field missions to be a central element in the discharge of her mandate, as they allow her to gather first-hand information for preparing well-informed reports. Missions to specific countries are also of crucial importance when analysing patterns of human rights abuses and the root causes that give rise to and perpetuate violations of the right to life. It gives her an opportunity to exchange views with Governments and to be able to transmit the voices heard on the ground to Member States. It should also be recalled that the Special Rapporteur can conduct field missions only to countries that have officially invited her. Some requests for invitations have remained pending for years. The initiative by a number of countries to extend standing invitations to special procedures is encouraging and the Special Rapporteur hopes that this tradition will be embraced by all Member States.

13. During the period under review, missions were carried out to the Democratic Republic of the Congo (see E/CN.4/2003/3/Add.3), Afghanistan (see E/CN.4/2003/3/Add.4), Jamaica (see E/CN.4/2004/7/Add.2), Brazil (see E/CN.4/2004/7/Add.3) and the Sudan (E/CN.4/2005/7/Add.2). During her tenure, the Special Rapporteur visited the following countries:

Country visits by Ms. Asma Jahangir	*Symbol document*
Sudan (June 2004)	E/CN.4/2005/7/Add.2
Brazil (October 2003)	E/CN.4/2004/7/Add.3
Jamaica (February 2003)	E/CN.4/2004/7/Add.2 and Corr.1
Afghanistan (October 2002)	E/CN.4/2003/3/Add.4
Democratic Republic of the Congo (June 2002)	E/CN.4/2003/3/Add.3 and Corr.1
Honduras (August 2001)	E/CN.4/2003/3/Add.2
Turkey (February 2001)	E/CN.4/2002/74/Add.1 and Corr.1
Nepal (February 2000)	E/CN.4/2001/9/Add.2
East Timor (November 1999)	A/54/660
Mexico (July 1999)	E/CN.4/2000/3/Add.3
The former Yugoslav Republic of Macedonia and Albania regarding the situation in Kosovo (May 1999)	E/CN.4/2000/3/Add.2

IV. Overview of situations involving violations of the right to life

14. During the period under review, the Special Rapporteur transmitted communications to Governments or took other forms of action in relation to the following situations involving violations of the right to life: (a) non-implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment; (b) genocide and crimes against humanity; (c) violations of the right to life during armed conflicts; (d) deaths due to excessive use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality; (e) deaths in custody; (f) death threats and violations of the right to life of persons carrying out peaceful activities in defence of human rights; (g) expulsion, return of persons to a country or place where their lives are in danger (refoulement); (h) impunity, with special emphasis where Governments either ignore or take no effective action to address or investigate serial abuses of the right to life of vulnerable groups. Detailed accounts of correspondence and analyses can be found in her reports to the Commission on Human Rights (see E/CN.4/2003/3, paras. 29-75 and E/CN.4/2004/7, paras. 24-83).

15. Information brought to the attention of the Special Rapporteur during her tenure reveals certain general trends. This brief reflection on the emerging patterns noticed by the Special Rapporteur gives a better appreciation of the root causes of and the remedies for the human rights violations within this mandate. She therefore wishes to bring these to the attention of the General Assembly.

16. Reports of violations of the right to life are received by this mandate from all regions of the world and from all forms of political structures. The intensity of these violations apparently corresponds to the systems of government as well as to the level of unrest in a country. Further, the quality of governance has a bearing on the violations of human rights related to this mandate.

17. During her six years of experience with the mandate, the Special Rapporteur was able to identify five categories into which reports could be classified. These five categories are: (a) countries experiencing conflict situations; (b) post-conflict periods; (c) dictatorships or other forms of authoritarian rule; (d) countries in transition from authoritarian regimes to a democratic process; and (e) democratic countries. In each category the root causes of violations that result in extrajudicial, summary or arbitrary execution are different and, obviously, the remedies vary. The intensity of violations of human rights (covered by this mandate) has a direct connection to conditions in each of the categories identified by the Special Rapporteur. The largest number of reports of extrajudicial, summary or arbitrary executions come from areas or countries in armed conflict. These reports continue in post-conflict periods, though they may gradually taper off or disappear altogether, depending on the effectiveness and sustainability of ceasefire agreements or peace processes.

18. The legacy of a dictatorship or authoritarian regime affects countries during their transition to democracy as they face the challenging task of fulfilling the newly aroused expectations of the people while their institutions still retain the stamp of authoritarian rule. The Special Rapporteur has consistently argued that countries going through such transitions require the full support of and special consideration from the international community.

19. Violations of human rights related to this mandate have been reported from countries with a democratic system of government, though these are fewer in number than those received from the other categories. Also, fewer reports of impunity for perpetrators of serious human rights violations come from these countries. A variety of factors contribute to violations of the right to life in this category of country and they can largely be attributed to a lack of decent governance as well as to poor institution-building. The judicial system, the public prosecutors and the law enforcement machinery are the key institutions that determine the level of respect for the right to life. High levels of crime are often mentioned as a reason for extrajudicial killings. The Special Rapporteur vehemently disagrees with this view. However, there may be situations in which a lack of training or integrity on the part of the security forces could result in extrajudicial killings. In some such situations, the Special Rapporteur has noted that the law enforcement agencies are infiltrated by criminal elements who carry out "reprisals" on their own initiatives. In other instances, the Special Rapporteur noted that the security forces are given carte blanche to fight crime, so they do not fear accountability. In other cases, suspected criminals are pursued by security forces in disregard of the principles of due process. In countries with high rates of crime the authorities are tempted to resort to arbitrary methods that are considered "unavoidable" in controlling crime. At the same time, a widespread sense of insecurity persuades the public not only to condone violations of the right to life committed by security forces but also to urge that extralegal solutions be taken to curb crime. The Special Rapporteur draws attention to these emerging patterns in order to provide the basis for her recommendations.

A. Capital punishment

20. The Special Rapporteur wishes to emphasize that the death penalty must under all circumstances be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner possible. Indeed, various provisions of international law and resolutions of the United Nations stipulate that capital punishment shall only be allowed as an extreme measure for the most serious crimes and only in cases where the highest standards of fair trial are observed.

21. The Special Rapporteur takes action in cases where there is reason to believe that restrictions on the use of death penalty, as well as safeguards guaranteeing the right to a fair trial, were not being respected. In such cases, the carrying out of a death sentence may constitute a form of summary or arbitrary execution.

22. As provided in article 6, paragraph 5, of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child, a sentence of death shall not be imposed for crimes committed by persons below 18 years of age. During the period under review, the Special Rapporteur has intervened in cases of juvenile offenders facing the death penalty with the Governments of the Democratic Republic of the Congo, the Philippines, the Sudan and the United States of America. Overall, the Special Rapporteur notes with satisfaction that Governments have, over the last six years, increasingly demonstrated their respect for the prohibition of the death penalty for child offenders. However, the Special Rapporteur has received reports from countries where children have been sentenced to capital punishment, though they have so far not been executed. The Special Rapporteur urges the Governments concerned to review these sentences, in view of

the current virtual consensus on the abolition of the death penalty for children who are below the age of 18 at the time of the occurrence of the crime.

23. During the present reporting period, the Special Rapporteur has also acted on cases in which persons with mental disabilities or infirmities have been sentenced to death in violation of the safeguards guaranteeing protection for those facing the death penalty. The Special Rapporteur urges Governments to respect the safeguards and restrictions established by resolution 1989/64 of the Economic and Social Council. In this connection, she sent several communications to the United States of America.

24. The Special Rapporteur is concerned that in many instances legal proceedings in relation to capital offences do not conform to the highest standards of impartiality, competence, objectivity and independence of the judiciary, in accordance with the pertinent international instruments. The imposition of the death penalty by special courts and under special laws is also a cause of concern as these laws are often incompatible with human rights norms and special tribunals fail to provide due process. The Special Rapporteur also received numerous reports from various countries where torture is used to extract confessions, on the basis of which death sentences are handed down. In this respect, the Special Rapporteur is particularly concerned at reports according to which executions were carried out in secret by some countries despite the intervention of the Human Rights Committee, which requested the Government to stay the executions while the Committee considered the case.

25. In a number of countries, the death penalty is imposed for crimes that do not fall within the category of the "most serious crimes" as stipulated in article 6, paragraph 6, of the International Covenant on Civil and Political Rights. Paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty states that the scope of crimes subject to the death penalty "should not go beyond intentional crimes with lethal or other extremely grave consequences". The Special Rapporteur is strongly of the opinion that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, actions relating to prevailing moral values, or so-called religious offences as well as activities of a religious or political nature. In addition, acts of treason, espionage, or other vaguely defined acts usually described as "crimes against the State" do not by themselves fall within the category of "most serious crimes". A number of such laws are vaguely defined and are reportedly misused to persecute political opponents. The Special Rapporteur further believes that the death penalty should under no circumstances be mandatory, regardless of the charges involved.

26. Another cause of concern is the manner in which death sentences are carried out. Public hangings and other inhuman forms of execution continue to be practised in many countries. In this connection, the Special Rapporteur wishes to recall that paragraph 9 of the Safeguards guaranteeing protection of the right of those facing the death penalty stipulates that "where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering". The Special Rapporteur believes that public executions also cause suffering to those who are forced to witness an unnatural termination of human life.

27. In a number of retentionist countries — even those with generally strong legal system — the Special Rapporteur notes that it is difficult to obtain accurate statistics or timely information on cases where the death penalty has been imposed. Figures are either not made official or not updated. Information about prisoners on death

row is not readily made available, thereby increasing the possibility of infringement of existing standards on safeguards and restrictions relating to the imposition of capital punishment. In two of the countries she visited during the period under review, the Special Rapporteur discovered two inmates who had been sentenced to death for crimes they had allegedly committed before they were 18. The laws of both countries prohibited capital punishment for juvenile offenders. The competent government officials of these countries admitted to the Special Rapporteur that they had not been officially informed of the imprisonment or sentencing of the detained juveniles. This experience convinces the Special Rapporteur that the implementation of the safeguards and restrictions stipulated by international standards are not being observed by Governments. Children are vulnerable to languishing undiscovered in large prisons where a number of people are on death row. It is critical to allow members of the civil society access to prisons and to ensure greater transparency in death penalty cases.

B. Genocide and crimes against humanity

28. The Special Rapporteur believes that the crime of genocide is a threat to international peace and security, the international community has a greater responsibility for ensuring that human rights violations of such a scale are investigated and those responsible brought to justice, without exception. There is also a need to take preventive measures against possible acts of genocide and crimes against humanity. One such measure is to ensure that perpetrators of grave human rights violations are brought to justice.

29. In this regard the Special Rapporteur wishes to stress that she is mandated to draw to the attention of the United Nations High Commissioner for Human Rights such situations of extrajudicial, summary or arbitrary executions as are of particular concern to her or where early action might prevent further deterioration. This is an important aspect of her mandate as it allows her to identify emerging crises that might not necessarily receive sufficient attention. In February 2004, the Special Rapporteur raised her concerns over the deteriorating human rights and humanitarian situation in the Darfur region of the Sudan. In this connection, she welcomes the report of the High Commissioner for Human Rights on the human rights situation in Darfur (E/CN.4/2005/3). From 1 to 13 June 2004, the Special Rapporteur carried out a mission to the Sudan. The report on the mission (E/CN.4/2005/7/Add.2) will be submitted before the Commission on Human Rights at its sixty-first session. During her mission, the Special Rapporteur was able to gather a great number of testimonies of internally displaced persons in camps and urban settlements in all three states of Darfur. The persons interviewed gave numerous accounts of extrajudicial and summary executions carried out by Government-backed militias, the Popular Defence Forces and the armed forces themselves. The locations of some mass graves reported to the Special Rapporteur could not be verified owing to security concerns as well as time constraints. There were, however, strong indications that the human rights violations reported to the Special Rapporteur, owing to their gravity and scale, could constitute crimes against humanity. There is a compelling need to carry out a comprehensive documentation of the incidents of extrajudicial and summary executions in Darfur in order to bring the perpetrators of these grave human rights violations to justice.

30. The capacity of this mandate is limited; the Special Rapporteur therefore supports the setting up of a focal machinery which should come into play as soon as early warnings of a deteriorating situation are transmitted by this mandate or other United Nations bodies. In this connection, she welcomes the Secretary-General's comprehensive Action Plan to Prevent Genocide and his decision to appoint a Special Adviser on the Prevention of Genocide who will report to the Security Council, the General Assembly and the Commission. The terms of reference of the Special Adviser should include the monitoring and documenting of suspected crimes against humanity.

31. The Special Rapporteur continues to support the initiative taken by the Office of the High Commissioner for Human Rights in the light of her recommendations in her report on Afghanistan (E/CN.4/2003/3/Add.4). Thus, a mapping exercise is now under way to catalogue incidents of summary executions from April 1978 to the assumption of power by the Afghan Interim Authority in December 2001. She is firmly of the view that security concerns cannot be met by sidelining the issue of transitional justice.

C. Violations of the right to life during armed conflict contrary to international humanitarian law, or as a consequence of it

32. During the period under review, the Special Rapporteur has continued to receive alarming reports of civilians and persons hors de combat, including many women and children, killed in situations of armed conflict and internal strife as a result of deliberate attacks, the use of indiscriminate and disproportionate force, or the blockage of goods and services, including humanitarian aid.

33. The Special Rapporteur expresses her repugnance at acts of terrorism and understands the difficult challenges faced by Governments in controlling violence by terrorist groups. During her tenure as a Special Rapporteur she has seen and heard wrenching accounts of abuses of human rights carried out by armed non-State actors. This should, however, not distract Governments from upholding the principles relating to the right to life at all times, including during armed conflict or in the face of the threat of terrorism. It is important to recall that, in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights are non-derogeable in any circumstances, the first of which is the right to life, which remains absolute.

34. While international law recognizes the right of States to take measures to maintain or re-establish their authority and law and order, or to defend their territorial integrity, it requires that the measures taken be consistent with human rights and humanitarian law. In doing so, all States are required to respect the means or methods of combat that are the most proportionate to the circumstances, thereby respecting the principle of proportionality embedded in most national legal systems and that also underlies the international legal order. A number of reports received by the Special Rapporteur during the period under review reveal a disturbing trend towards the use of excessive and indiscriminate force.

35. A truly disturbing development was the incident in Yemen on 3 November 2002 when six men, one of them allegedly suspected of being a senior Al-Qaida figure, were reportedly killed while travelling in a car by a missile launched by a Predator drone aircraft controlled by the United States. The strike was reportedly carried out with the cooperation and approval of the Government of Yemen, which

subsequently provided information confirming that the men had been involved in the attacks on a United States military vessel as well as a French tanker out of the port of Aden. The Government of Yemen stressed that had the persons come forward, all their rights would have been protected. The Special Rapporteur is extremely concerned since such actions appear to have set an alarming precedent for the carrying out of extrajudicial or summary executions by consent of Governments. While she acknowledges that Governments have a responsibility to protect their citizens against the excesses of non-State actors or other authorities, she wishes to emphasize that these actions must be taken in accordance with international human rights and humanitarian law and that Governments should, in no circumstances, resort to summary or extrajudicial killing.

36. The Special Rapporteur is also particularly disturbed at reports received in the last year (but mostly in the context of post-11 September counter-terrorism measures) from several countries where aerial firing or bombardment has been used to kill civilians suspected of being terrorists, thereby also causing the loss of many other civilian lives. In this regard, the Special Rapporteur has expressed concern at the aerial bombing of Hamas spiritual leader Sheikh Ahmed Yassin on 22 March 2004 in the Occupied Palestinian Territory, which resulted in the deaths of seven other civilians. The Special Rapporteur reiterates that aerial bombing or targeted assassinations in areas populated by civilians resulting in deaths would constitute extrajudicial or summary executions. The Special Rapporteur is distressed by reports indicating that some Governments are pursuing a policy to mete out collective punishments by way of "eliminating" communities suspected of being close to alleged terrorists.

37. The situation in Iraq is also of great concern to the Special Rapporteur. Reports indicate that human rights as well as international humanitarian law have allegedly been ignored or violated. According to information received civilians, including children, have allegedly been shot inside their homes or in their vehicles by United States soldiers in the course of their daily operations. In May 2003, the Special Rapporteur received reports that new rules were allegedly established according to which United States military forces in Iraq were to have the authority to shoot "looters" on sight. The Special Rapporteur continues to be concerned at reports indicating that security personnel were allegedly contracted by the United States authorities from private firms to interrogate and guard prisoners in Iraq. At the time of writing this report, no information had been received from the Government of the United States clarifying those allegations or specifying the role, functions and accountability of those personnel. In addition, the instructions and training given to them on the force they might be required to use should also be clarified.

D. Deaths due to attacks by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State

38. Members of paramilitary groups or armed individuals cooperating with security forces or operating with their acquiescence were also reported to have resorted to arbitrary and excessive force. In some instances, such groups were reported to have been established by security forces themselves. In other cases, they were said to be at the service of individuals and/or organizations for the defence of a particular interest and had official patronage that allowed them to act outside the

law. Atrocities committed by such elements have become particularly common in the context of internal disturbances and conflicts, but such incidents have also been reported in relation to conflicts with an international dimension.

39. With regard to the situation in Nepal, the Special Rapporteur expresses her profound concern over the deteriorating human rights situation in the light of the reported intensification of the conflict between the Government and the Maoists involving an increase in extrajudicial executions, especially after the ceasefire declared by the Maoists had ended. In her report (E/CN.4/2001/9/Add.2), submitted following her mission to Nepal, the Special Rapporteur warned that the situation could deteriorate unless the root causes of the conflict were addressed. She fears that unless the international community takes note of the political underpinnings of the conflict, there could be further loss of life.

40. In the case of Colombia, the Special Rapporteur has continued to intervene in cases in which paramilitary groups, reportedly tolerated or supported by the Government, continue to carry out large-scale extrajudicial killings of civilians. In most instances, the paramilitary group Autodefensas Unidas de Colombia is responsible for summarily executing ordinary citizens as well as political leaders, trade unionists and human rights defenders whom they accuse of collaborating with guerrilla movements. In general, these killings continue unabated and without any intervention by government forces, even in instances where army camps are reportedly located nearby. Consequently, entire communities live in fear of an incursion by the Autodefensas Unidas de Colombia, as a result of which large portions of the local population are sometimes forcibly displaced.

41. In Brazil, many killings are attributed to groups described as "death squads" which often have ties with police. By their criminal activities, which benefit from the collusion or active participation of law enforcement agencies, they contribute to creating a pervasive climate of insecurity characterized by a very high level of homicides. Some groups are connected to organized crime while others are made up of off-duty police officers working as security guards for small businessmen. These groups use indiscriminate force, killing suspected criminals or passers-by with impunity.

42. Finally, although her mandate does not allow her to intervene in situations where atrocities are committed by non-State actors, the Special Rapporteur wishes to point out that she continues to receive an increasing number of reports of the use of violence by killings attributed to various groups. These include genuine or presumed rebels, private security forces, militia elements and other non-State actors in various regions of the world in the context of internal disturbances or conflicts with an international dimension.

E. Deaths due to the use of force by law enforcement officials or persons acting in direct compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

43. During the period under review, the Special Rapporteur has received numerous accounts of excessive use of force by the police or the army, resulting in a number of deaths in connection with the repression of peaceful demonstrations or as a result of shoot-outs with law enforcement agents. The Special Rapporteur has also received reports indicating significant numbers of extrajudicial executions as a

result of law enforcement operations by the authorities aimed at cracking down on crime by carrying out "preventive sweeps" into poorer communities. She is concerned that hardline policies adopted by Governments tend to be misused by law enforcement agencies, often resulting in extrajudicial killings. Heavy-handed government actions "crushing crime" give certain elements within the law enforcement authorities latitude to deliver rough and easy justice to those they consider socially "undesirable". In the course of their raids, the police, who often lack the training and the means to properly carry out these operations, are known to engage in unjustified fatal shootings of alleged criminal suspects or local inhabitants. These operations mostly take place in large urban centres that generally suffer from an extremely high level of crime. Nevertheless, the Special Rapporteur notes that police violence is not limited to these areas and that those killed often include landless peasants or indigenous leaders in rural areas involved in land disputes, and youngsters from disadvantaged homes caught in police operations.

F. Impunity

44. For a more detailed discussion regarding the issue of impunity, compensation and the rights of victims, the Special Rapporteur refers to her earlier reports (e.g. E/CN.4/2000/3, sect. V.E, and E/CN.4/2001/9, sect. V.C.).

45. Impunity for grave human rights violations that could constitute crimes against humanity continues to challenge the international community. In a general context of advancing globalization in matters such as the rule of law as set out in international human rights and humanitarian standards, the international community needs to show both the political will and the moral courage to confront human rights abuses by ensuring that strong, independent and effective institutions with universal jurisdiction are strengthened. In this regard, the coming into force of the Rome Statute of the International Criminal Court on 1 July 2002 is a very positive development as the Court has the potential to be a powerful tool in the fight against impunity for grave human rights violations, including extrajudicial, summary or arbitrary executions. The Special Rapporteur again urges Governments to proceed to ratification as soon as possible in order to widen the scope of the International Criminal Court.

46. In addition to these national mechanisms, there is a growing trend according to which national Governments are now under increasing pressure not just to deal with abuses at home, but also to ensure that, where possible, the courts in their country deal with abuses happening elsewhere. The Special Rapporteur notes that, over the past few years, there have been some attempts to resort to the universal jurisdiction rule which allows national courts to try those who have committed war crimes and crimes against humanity in other countries. The Special Rapporteur believes that if more national courts were to invoke the universal jurisdiction rule, it would be a very effective means of demonstrating to those who commit the most horrific crimes that there is no safe haven.

47. In countries in post-conflict situations, there is a growing tendency, during critical periods of the peace process, to prioritize peace over justice. While the Special Rapporteur comprehends the rationale for such decisions, she reiterates that they do undermine the rule of law as well as the sustainability of any peace process. During her mission to Afghanistan, the Special Rapporteur insisted on the obligation of the international community to take the lead in putting past human rights

violations on record as part of the move towards setting up mechanisms for transitional justice. Indeed, inaction on this issue is only likely to entrench a culture of impunity and promote the recurrence of grave human rights violations in Afghanistan, as well as elsewhere in the world. The Special Rapporteur further recommended that, as a first step towards accountability, an international independent commission of inquiry be constituted, backed by the United Nations, to undertake an initial mapping and stock taking of grave human rights violations of the past in order to determine which violations could constitute crimes against humanity. As mentioned earlier, the Special Rapporteur is encouraged by the initiative taken by OHCHR in this regard, a mapping exercise is now under way to catalogue incidents of summary executions from April 1978 to December 2001.

48. In some cases, the basis for impunity lies in legislation that exempts perpetrators of human rights abuses from prosecution. In her previous report to the Commission, the Special Rapporteur referred to amnesty laws in Bangladesh, Colombia and the Gambia. In this connection, the Special Rapporteur believes that there should and can be no impunity for serious human rights abuses, in particular violations of the right to life, regardless of the past or present status or position of the alleged perpetrator. At the same time, in order to be effective and meaningful in fostering accountability among State officials and rulers, measures taken to prosecute human rights offenders cannot be selective, but must be part of broader policies aimed at promoting peace, social stability and respect for the law.

49. In many countries, authorities often do not react to complaints filed by victims, their families or representatives, or heed communications from international entities, including the Special Rapporteur. It should be recalled that Governments are ex officio, under an obligation to initiate inquiries into allegations as soon as they are brought to their attention, particularly where an alleged violation of the right to life is imminent and effective measures of protection must be adopted by the authorities. However, in some countries, investigations are not conducted while in other countries investigations are never concluded, or if they are, the sentences imposed on perpetrators are hopelessly disproportionate to the gravity of the crime. Furthermore, problems relating to the functioning of the judiciary, in particular its independence and impartiality also encourage impunity. In some countries there is no independent judiciary, or the justice system does not function in practice; this limits the capacity for proper investigation. The Special Rapporteur expresses concern about reports regarding trials of members of the security forces before military courts where, it is alleged, they escape punishment because of an ill-conceived esprit de corps, which generally results in impunity. She noted this pattern during her missions to a number of countries.

50. The Special Rapporteur is acutely sensitive to impunity resulting from either action or inaction by Governments, for multiple killings of members of vulnerable groups. She was able to identify this tendency in some of her reports and to demonstrate that such killings were not isolated incidents. Many of the victims had been targeted because of their sexual identity. Despite drawing this to the attention of concerned Governments, hardly any action was taken and the perpetrators of such crimes continue to enjoy impunity.

G. Violations of the right to life of children

51. During the period under review, the Special Rapporteur took action on behalf of several minors who were victims of violations of the right to life, including imposition of the death penalty, death in custody, death owing to abuse of force and death during armed conflict.

52. The Special Rapporteur is particularly shocked by the large number of reports she has received of the use of lethal force by members of security forces against children and youths. An alarming number of reports of deliberate use of firearms by military police, security forces and police agents participating in preventive sweeps against street children in poorer communities, in particular in Brazil, Guatemala, Honduras and Jamaica, were received. While the problem is not exclusive to these countries, it appears that minors in some developing countries are becoming the targets of extrajudicial killings by vigilante groups, often of off-duty law enforcement agents, as well as by security forces. Regrettably, those victimized children are often stigmatized and considered socially undesirable, especially in countries where there is a high crime rate, where youngsters are largely unemployed and where educational institutions for children are inadequate.

53. The Special Rapporteur also intervened in cases of imposition of the death penalty for crimes committed by persons below 18 years of age, a detailed account of which can be found in the section relating to capital punishment.

H. Violations of the right to life of women

54. During the period under review, the Special Rapporteur continued to receive reports of gender-based crimes, which thrive on impunity. In this regard, the Special Rapporteur received many reports of so-called "honour killings" where the State either approves of or supports these acts, or permits de facto impunity for the perpetrators by inaction. In this connection, she transmitted to the Government of Pakistan a communication relating to the murders of 208 women (see E/CN.4/2004/7/Add.1, paras. 354-500). The perpetrators of these crimes are always male family members or persons acting at their behest. The rationale for killing is to preserve a misconceived notion of "family honour", allegedly jeopardized by the victim herself. In the great majority of cases transmitted by the Special Rapporteur to the Government of Pakistan, the information received indicated that the murderers remain unpunished either because no complaint was ever filed by relatives of the victims, or because the police investigation is allegedly ongoing without any concrete result. In some cases, it is reported that the police refused to register a complaint, claiming that the victims' relatives should forgive the perpetrator who is considered to have acted in all fairness. According to the information received, in some cases the murderers reportedly surrender to the police, along with the murder weapon, but no action is ever taken against them. The Special Rapporteur was informed of the cases of 2,774 women killed over the last six years in Pakistan for "dishonouring" their families, but the Special Rapporteur selected only those cases which fell within her mandate: those in which government officials were complicit or had failed to take action. It is worth mentioning that, during the reporting period, the Government of Pakistan has sent five communications clarifying the cases of 24 victims of honour killings. In most instances, the Government provided information relating the autopsies of the victims, as well as to the arrest of perpetrators and their subsequent trials. While

welcoming the incipient efforts of the Government of Pakistan to halt impunity for perpetrators of gender-based crimes, the Special Rapporteur recommends that her successor closely follow up this problem by continuing to bring up cases and seeking an adequate response from the Government.

55. The laws in Pakistan allow the heirs of the victim to forgive the murderer, who is then set free. In the case of honour killings, the perpetrators are almost always close family members, who are forgiven by other relatives, thus ensuring impunity. In this regard, the Special Rapporteur wishes to recall that Governments are obliged to protect the right to life of every individual by taking all appropriate actions, including legislative measures, and by adopting policies and administrative measures to protect the lives of threatened women. In addition, they are obliged to de-legitimize customs and practices that threaten the lives of women. She further refers to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, according to which "State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... (b) to adopt appropriate legislative and other measures, including sanctions, ... prohibiting all discrimination against women"; "(d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation"; and "(f) to take all appropriate measures ... to modify or abolish customs and practices which constitute discrimination against women".

56. The Special Rapporteur is also increasingly concerned about reports of women being condemned to death for adultery, as this offence does not constitute a "most serious" crime, nor is it an intentional crime with lethal or other extremely grave consequences, nor is it life threatening. In this connection, the Special Rapporteur welcomes the decision by the Shariah Court of Appeal of Katsina State, in northern Nigeria, to quash the sentence of death by stoning handed down on 22 March 2002 against Amina Lawal, whose case was widely publicized by human rights organizations around the world. According to the information received, under new Shariah penal legislation, in force in several northern Nigerian states since 1999, Amina Lawal was found guilty of adultery after bearing a child outside marriage, a charge which carries the mandatory punishment of death by stoning. While Amina Lawal's conviction was quashed, the Special Rapporteur regrets that, according to the information received, another similar case was still pending in another Shariah court of appeal in Minna, Niger State, Nigeria.

I. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities or because of their sexual orientation

57. During the period under review, the Special Rapporteur acted on behalf of a variety of persons belonging to national, ethnic, religious and/or linguistic minorities in Algeria, Bolivia, Brazil, China, Colombia, Guatemala, Honduras, India, Indonesia, Kazakhstan, the Libyan Arab Jamahiriya, Mexico, Pakistan, Saudi Arabia, Ukraine, Thailand and Viet Nam.

58. A cause for continuing concern is the situation of indigenous communities in various parts of Latin America, such as Bolivia, Brazil, Colombia, Guatemala and Mexico. While on mission in Brazil, the Special Rapporteur heard testimonies of

killings and threats directed against indigenous leaders and members of their community. The Special Rapporteur wishes to emphasize that the Governments must ensure the protection of all citizens under its jurisdiction, regardless of ethnic origin.

59. The Special Rapporteur also continued to monitor the situation in China with regard to the situation in Tibet. In December 2002, she was concerned about the sentencing of two Tibetans, Tenzin Deleg Rinpoche and Lobsang Dhondup, to death for allegedly causing an explosion. Reports indicate that the trial was unfair and based mainly on circumstantial evidence. Besides, confessions were allegedly obtained under torture and the two accused did not have access to a lawyer during their trial. The Special Rapporteur is particularly concerned about the secret execution of Lobsang Dhondup in February 2003. Also in China, the Special Rapporteur continues to pay attention to the situation of the Falun Gong, members of which are allegedly detained solely for belonging to this movement and who are victims of severe ill-treatment resulting in extrajudicial execution while in custody.

60. The Special Rapporteur has continued to receive reports of persons having been subjected to death threats or who were extrajudicially killed because of their sexual orientation. During her visit to Afghanistan, the Special Rapporteur received credible reports of suspected homosexuals being buried alive during the Taliban period. She also sent a letter of allegation to the Government of Venezuela concerning the killing of three transsexual persons into which the authorities had reportedly failed to carry out proper investigation.

J. Violations of the right to life of persons exercising their right to freedom of opinion and expression

61. The Special Rapporteur continued to receive reports of journalists who are the targets of death threats and extrajudicial killings because of their work to uncover corruption, organized crime and human rights violations. She also received reports of persons targeted because of their public political statements. In this connection, she sent urgent appeals and letters of allegation to the following countries: Argentina, Bangladesh, Colombia, Côte d'Ivoire, Cuba, Ecuador, Ethiopia, Ghana, Guatemala, Haiti, India, Iran (Islamic Republic of), Iraq, Israel, Kazakhstan, Libyan Arab Jamahiriya, Mexico, Nepal, Nigeria, Pakistan, Peru, Republic of Moldova, Ukraine and Uruguay.

K. Expulsion, return of persons to a country or place where their lives are in danger (refoulement), and violations of the right to life concerning refugees and internally displaced persons

62. The Special Rapporteur notes that extrajudicial killings in the context of global migration have become of increasing concern. The issue is increasingly highlighted as people find it necessary to move, both inside and outside their countries, for political, economic, social or other reasons, and as the world population becomes more mobile. The Special Rapporteur wishes to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in all territories under their jurisdiction, regardless of the citizenship of the persons concerned. During the period under review, the Special Rapporteur addressed urgent appeals to the Governments of India and the Libyan Arab Jamahiriya regarding

individuals who were at risk of being forcibly returned to their countries of origin where they could face possible extrajudicial execution.

63. The Special Rapporteur is also deeply concerned at reports of deliberate attacks against refugees and internally displaced persons. Such incidents are particularly common in situations of internal conflict and unrest, where the direct targeting of civilians has increasingly become one of the tactics employed by the parties involved.

L. Deaths in custody

64. A very large proportion of human rights violations reported during the period under review relate to alleged cases of deaths in custody. In this regard, the Special Rapporteur transmitted allegations to the Governments of the following countries: Algeria, Argentina, Azerbaijan, Belgium, China, Colombia, Democratic Republic of the Congo, Ecuador, Egypt, Equatorial Guinea, Georgia, Germany, Guatemala, Guinea-Bissau, Haiti, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Kazakhstan, Liberia, Libyan Arab Jamahiriya, Malaysia, Nepal, Pakistan, Peru, Russian Federation, Serbia and Montenegro, Sierra Leone, Spain, Sri Lanka, Sudan, Turkmenistan, Uganda, United States of America, Uruguay, Uzbekistan, Viet Nam and Zimbabwe. While a majority of Governments provided the Special Rapporteur with comprehensive replies explaining or clarifying their position, she was able to identify the following patterns.

65. In most instances, reports indicate that these deaths occur as a result of severe ill-treatment or neglect. When investigations are initiated, they allegedly often fall short of minimum requirements or their results are reportedly suppressed. Suspects held in pre-trial detention are allegedly tortured to death by law enforcement agents seeking to obtain confessions. Other cases indicate deaths in prison either as a result of torture by guards, or due to negligence by prison authorities. The Special Rapporteur also received many cases of deaths in custody alleging deliberate failure to provide medical attention.

M. Death threats and violations of the right to life of persons carrying out peaceful activities in defence of human rights

66. The Special Rapporteur has continued to transmit urgent appeals aimed at preventing loss of life after having received reports of situations where the lives and physical integrity of persons were thought to be in danger. The Special Rapporteur also intervenes in cases where there are reasons to believe that Government-controlled actors are involved, or when it appears that government authorities have failed to provide appropriate protection. The targets of such death threats are usually persons who are exercising their right to freedom of expression or who are acting in defence of human rights. In this context, the Special Rapporteur sent urgent appeals to the following countries: Algeria, Argentina, Azerbaijan, Bangladesh, Bolivia, Brazil, China, Colombia, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Indonesia, Iraq, Jamaica, Kyrgyzstan, Mexico, Namibia, Nicaragua, Pakistan, Paraguay, Peru, Republic of Moldova, Sri Lanka, Sudan, Turkey, Ukraine, Uruguay and Venezuela.

67. The Special Rapporteur is particularly concerned at the situation in Colombia where all sectors of the civil society are affected by death threats, including State officials working on human rights issues. The Special Rapporteur notes that certain groups are more targeted than others, for example, trade unionists, human rights defenders and indigenous leaders. Furthermore, entire communities, composed of hundreds of individuals, are also reportedly at risk after death threats are issued against them by paramilitary groups that accuse them of collaborating with guerrilla groups.

68. The Special Rapporteur has continued to receive reports of extrajudicial killings directed against human rights activists, lawyers, community workers, teachers, journalists and other persons engaged in activities aimed at promoting human rights or publicizing human rights violations. During the period under review, the Special Rapporteur took action on behalf of human rights defenders in the following countries: Colombia, Côte d'Ivoire, Democratic Republic of the Congo, the Gambia, Haiti, India, Iran (Islamic Republic of), Israel, Mexico, Myanmar, Nigeria and Sudan.

69. The Special Rapporteur deeply deplores the killing of two of the individuals who provided valuable information to her during her mission to Brazil from 16 September to 8 October 2003. She is deeply disturbed over what could be considered acts of reprisal, and encourages the Government of Brazil to take all necessary measures to protect victims and witnesses of human rights abuses, in conformity with the agreed terms of reference for fact-finding missions by Special Rapporteurs. For a more general analysis of this issue, see document E/CN.4/2004/29.

V. Conclusions

70. **The Special Rapporteur is obliged to conclude that there is no indication that the number of violations of the right to life has decreased during the period under review. Indeed, the increasing number of communications relating to alleged violations of the right to life offers an insight into the magnitude of the incidence of extrajudicial, summary or arbitrary executions worldwide.**

71. **The disproportionate and arbitrary use of force as a means of countering terrorism is a matter of deep concern to the Special Rapporteur. There are increasing reports of Governments that have resorted to the deliberate use of excessive force against suspected terrorists or civilians as counter-terrorist measures.**

72. **There is virtual consensus that children under the age of 18 should not be subject to the death penalty. The Special Rapporteur is encouraged by this growing trend, which appears to be moving towards abolition of death penalty for children.**

73. **A large number of countries retaining the death penalty do not employ methods that allow for greater transparency in cases of capital punishment. Statistics on capital punishment are lacking and there is little information on individual cases of where the death penalty has applied.**

74. The Special Rapporteur welcomes the establishment of a mechanism to collect information on potential or existing situations or threats of genocide or crimes against humanity, as she considers that this is critical for proceeding towards any form of transitional justice and for putting an end to impunity.

VI. Recommendations

75. In view of the lack of capacity in a number of retentionist countries to observe the relevant safeguards and limitations when applying the death penalty, the Special Rapporteur calls upon all retentionist States to impose a moratorium on executions and to set up national commissions to report on the situation in the light of international standards and resolutions, so that those States are able to ensure that all applicable safeguards and guarantees are indeed observed. Governments should also keep up-to-date records relating to the death penalty and should make them available to the public. Members of civil society should be able to visit prisons where inmates sentenced to death are detained. The Special Rapporteur further recommends that, in view of the current virtual consensus on the abolition of death penalty for children who are below the age of 18 at the time of the commission of the crime, such executions should be completely abolished.

76. All Governments are encouraged to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. The Special Rapporteur calls on States to pay due attention to the stipulations in the Convention concerning the prevention of genocide. Concerned States, assisted by the international community, should take all necessary measures to prevent acts of communal violence from degenerating into large-scale killings that may reach genocidal dimensions. States in which acts of communal violence occur should do their utmost to halt such conflicts at an early stage and to work towards reconciliation and peaceful coexistence of all segments of the population, regardless of ethnic origin, religion, language or any other distinction. Governments should at all times refrain from any propaganda or incitement to hatred and intolerance that might foment acts of communal violence, nor should they condone such acts. The Special Rapporteur calls upon those Governments that support, arm or protect militias within their jurisdictions to abandon such policies as they increase the likelihood of large-scale bloodshed leading to crimes against humanity or genocide.

77. The Special Rapporteur also urges all States that have not already done so to ratify the Rome Statute of the International Criminal Court, which provides for a permanent mechanism to deal with crimes affecting the entire human race, such as genocide.

78. All States that have not yet done so are encouraged to ratify the four Geneva Conventions for the protection of war victims of 12 August 1949 and the two Additional Protocols thereto of 1977. The training of members of the armed forces and other security forces should include instruction on the content of these instruments in addition to the others dealing with human rights.

79. **Governments of countries in which terrorist groups are active should ensure that counter-insurgency operations are conducted in conformity with human rights standards, so as to minimize the loss of lives, and with respect for the principle of proportionality. In this connection, Governments should refrain from inflicting collective punishments on innocent civilians.**

80. **All Governments should ensure that their security personnel receive thorough training in human rights issues, particularly with regard to restrictions on the use of force and firearms in the discharge of their duties. Such training should include the teaching of methods of crowd control without resorting to lethal force. Every effort should be made by States to combat impunity in this field. In order to better tackle the problem of extrajudicial executions by law enforcement officials, Governments should endeavour to publish regular statistics relating to complaints of extrajudicial killings. They should maintain a databank containing precise information on reports of extrajudicial killings, including the conclusion drawn in each case along with the profile of the victim or deceased.**

81. **Governments should explore ways of providing better protection to those in custody. Places of detention could be put under electronic surveillance (without intruding on the privacy of the inmates). All incidents of deaths in custody should be thoroughly investigated and processed through an independent judicial body.**

82. **Governments should continue to upgrade the forensic equipment at their disposal and ensure that all forensic institutes are autonomous and independent.**

83. **There is a critical need to lend support to those countries that are emerging democracies and in transition, so that they are better equipped to reform the law enforcement agencies and the judiciary during this process.**

84. **The recommendations of the Special Rapporteur in her report to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/7, para. 96) should be read as an integral part of this section.**